



# United States Department of the Interior

## NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, D.C. 20240

MAY 3 2011

Re: **324 and 326 Park Avenue, Baltimore, Maryland**  
Project Numbers: **20049 & 20219**

Dear ,

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the properties cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you for meeting with me in Washington on February 25, 2011, and for providing a detailed account of the projects.

After careful review of the complete record for this project, including the additional information supplied by in a letter dated April 15, 2011, I have determined that the rehabilitation of 324 and 326 Park Avenue is not consistent with the historic character of the properties and the historic district in which they are located, and that the projects do not meet Standards 2, 6, and 9 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on November 9, 2010, by TPS is hereby affirmed. However, I have further determined that the projects could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

Built ca. 1890, 324 and 326 Park Avenue are located in the Market Center Historic District. They were certified as contributing to the significance of the district on July 27, 2007. Part 2 – Description of Rehabilitation applications describing the in-progress rehabilitations were approved, with conditions, on December 3, 2007. Upon receipt of the Part 3 - Request for Certification of Completed Work, TPS found that the projects did not meet the Standards for Rehabilitation because historic trim was not retained on either interior. TPS also cited the new storefronts and the new cornices on both buildings, and the new window hoods on 324 Park Avenue, as being incompatible with the historic character of both buildings.

With regard to the first of these issues—the interior window and door trim—I note that photographs of the properties taken immediately prior to the rehabilitation depict interiors in a ruinous condition. Nearly all finishes and features had suffered extensive fire and water damage or had been removed, and, as a result, the interior of both structures had lost any semblance of historic integrity. Given the overall condition of the interiors, saving the few elements of trim that survived was neither necessary nor even feasible. Consequently, the interior treatments played no part in my decision.

As it was, any significance these buildings possessed inhered in their exteriors, and it is the work on their street facades that causes both projects to contravene the Standards for Rehabilitation and thus to fail the minimum test for certification.

With regard to the cornices and window hoods, prior to rehabilitation, both 324 and 326 Park Avenue retained their historic cornices; the former also retained its historic window hoods. From the "before" photographs, it appears that both the cornices and window hoods were in repairable condition, or at the very least were physical evidence of the original designs. Indeed, the Part 2 application stated that the rehabilitation would "Clean and preserve original cornice." However, these features were removed during the rehabilitation and were replaced with new ones that do not match the historic ones removed. As a result, I find that both projects fail to meet Standards 2 and 6. Standard 2 states: "*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*" Standard 6 states: "*Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*" The letter from \_\_\_\_\_ dated April 15, 2011, cites the prohibitive cost differential (estimated at \$9,000) of replacing the historic cornices and window hoods to match versus installing simplified cornices and window hoods that only recall the historic ones. I note that the overall estimated cost of rehabilitation in the Part 2 application was \$520,000. Although rehabilitating historic buildings can be challenging and expensive, the investment tax credit was established in part to incentivize such work; it is also why the credit for rehabilitating historic buildings (20%) is *twice* the credit applicable to the rehabilitation of non-historic buildings (10%).

With regard to the storefronts, because the historic storefronts had evidently been damaged or removed prior to the rehabilitation (to judge from the "before" photographs, which showed the first floors boarded over), two options were available to you under the Standards: to put back historic storefronts to a documented historic appearance, or to install new ones that are themselves compatible with the historic character of the buildings. The storefronts installed adopt neither of these approaches, and, thus bring the projects into further conflict with Standard 6, cited above, and with Standard 9. Standard 9 states: "*New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*"

At our meeting, you alleged a procedural error in the review of these applications, which restated in her letter of April 15th. It is as follows: that you submitted a drawing showing a revised storefront treatment to the SHPO, but that you heard nothing further concerning that amendment and that you eventually received approval of the Part 2 application. Department of the Interior regulations governing the program state that "*The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the Standards set forth herein or he considers that prejudicial procedural error by a Federal official legally compels issuance of the requested certification.*" [36 CFR § 67.10(c)]. As discussed above, I find that the completed rehabilitations do not meet the Secretary of the Interior's Standards. Furthermore, as discussed below, I do not consider there to have been any prejudicial procedural error by a Federal official that would compel issuance of the requested certification.

With regard to the timeline of the Part 2 amendment, which you described at our meeting, an amended storefront drawing was prepared by your architect and sent to the SHPO, which received it on September 27, 2007. The SHPO staff then prepared an alternate storefront design, and submitted both to the NPS, which received them on November 7, 2007. In response, NPS issued a determination dated December 3, 2007, stating that the projects would meet the Standards for Rehabilitation "provided that" certain conditions were met. The first of these conditions states:

“Storefront: **The storefront design proposed is not acceptable** [emphasis original].  
...See sketch provided by the Maryland Historical Trust (SHPO) and Preservation Brief  
#11: Rehabilitating Historic Storefronts.... Prior to construction of the storefront, please  
submit a revised storefront design. Designs should be sent in duplicate to the SHPO and  
the National Park Service (NPS) for review and approval.”

The NPS determination thus rejected the design prepared by your architect, and called for a different revised storefront design to be submitted, and suggested that it be based on the design prepared by the SHPO. No record of any further revision exists in response to this conditional approval. And even if additional designs were submitted to the SHPO, the NPS never issued an approval in writing. As Department of the Interior regulations state: “*Approval of applications and amendments to applications is conveyed only in writing by duly authorized officials of the NPS acting on behalf of the Secretary.*” [36 CFR § 67.3(b)(5)].

With regard to \_\_\_\_\_ statement in her April 15, 2011, letter that “we eventually received the Approval of Part 2,” this appears to be a reference to a letter from TPS dated January 4, 2010, which states:

“On 12/3/2007, the National Park Service (NPS) approved the Historic Preservation Certification Application—Part 2 for the property cited above [324 Park Avenue; a separate letter refers to 326 Park Avenue]. To date, NPS has not received a ‘Request for Certification of Completed Work—Part 3’ for this project.”

The TPS letter goes on to request that you respond, indicating whether you wish to file a Part 3 or whether you wish the NPS to close the file. This letter is a form letter sent to owners of projects that have passed the estimated project completion date given on the Part 2 application and have not yet been completed. It does not constitute an approval of the Part 2; the reference to the “approval” issued on “12/3/2007” is an explicit reference to the *approval with conditions* set forth in that document. I can understand that this reference may have confused you, but since the project was completed nearly two years earlier (on February 1, 2008, according to the completion date given on the Part 3 received by NPS on January 28, 2010), I fail to see how it would constitute a prejudicial procedural error on which you relied to your disadvantage. Thus, with regard to the alleged prejudicial procedural error, I find some grounds for confusion, but not a prejudicial procedural error, let alone one sufficiently serious as to legally compel approval.

Although the project as completed cannot be approved, it could be brought into conformance with the Standards and thus meet the minimum test for certification if the windows hoods on 324 Park Avenue and the cornices on both 324 and 326 Park Avenue were to be replaced to match the historic ones removed, and if new storefronts more in keeping with the historic character of both 324 and 326 Park Avenue were to be constructed. The storefront design sketched by staff of the SHPO and discussed during our meeting would meet this test. However, please note that a different design could also be acceptable should you choose to explore other options.

If you choose to undertake the corrective measures described above, prior to initiating any work I strongly recommend that you submit a Part 2 amendment—with detailed drawings of the proposed cornices, window hoods, and storefronts—to TPS, Attention: \_\_\_\_\_ with a copy to the SHPO. I will review the amendment as soon as is practicable. Note that this project will remain ineligible for the tax incentives until it is designated a “certified rehabilitation” following completion of the overall project.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the November 9, 2010, denial that TPS issued regarding rehabilitation certification. A copy of

this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns", with a long, sweeping horizontal line extending to the right.

John A. Burns, FAIA  
Chief Appeals Officer  
Cultural Resources

cc: SHPO-MD  
IRS